

- (1) What is the nature and extent of claimant's injury and disability, if any?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) The Appeals Board finds claimant suffered an injury to her right upper extremity resulting in a permanent impairment to her right upper extremity of ten percent (10%) on a functional basis.

Claimant is a thirty-two year old sheet metal assembly worker performing repetitive twisting, pushing, pulling, grasping and lifting work while working with vibratory tools in Wichita, Kansas. In November 1990 she began developing problems in her right wrist, right forearm, left forearm, bilateral elbows, right shoulder, and right side of her neck. During her ongoing care and treatment with Dr. Rhodes and Dr. Melhorn, she had various symptoms which waxed and waned periodically. After a period of conservative care and cortisone shots, she ultimately underwent surgery to her right elbow by Dr. Melhorn on July 10, 1991. This consisted of a decompression of the ulnar nerve at the elbow. After surgery, claimant improved according to the records of Dr. Melhorn, although she denies improvement from the surgery and, in fact, blames the surgery for additional pain. Claimant was off work on temporary total disability compensation for a period of time when Cessna was unable to accommodate her restrictions. Ultimately she was returned to work at Cessna and was placed in the stockroom where she was limited to fifteen (15) pounds lifting and restricted from using vibratory tools.

Dr. Melhorn's primary concern during treatment was the right arm. The last examination by Dr. Melhorn was September 23, 1991, at which time her color and appearance were excellent, the surgical incision was well-healed, neuro and vascular patterns were unchanged and her grip strength on the right side had improved. Dr. Melhorn assessed claimant a nine and three-quarters percent (9.75%) functional impairment to the right upper extremity. Dr. Melhorn assessed no physical impairment to the claimant's left upper extremity or to her right shoulder as he found no symptoms to justify any impairment at her visit in September when he last examined her.

Claimant was examined by Dr. George Lucas on February 14, 1992. Dr. Lucas found the range of motion in both of claimant's shoulders to be normal without crepitus and assessed no impairment to her shoulders as a result. The claimant did have numerous complaints which were at times anatomically unexplainable. He assessed a ten percent (10%) permanent partial impairment to the right upper extremity on a functional basis and restricted claimant from heavy lifting, bucking rivets and the use of vibratory tools. He indicated the lack of findings on the left upper extremity a year and one-half after surgery indicated she was probably no longer favoring the right side thus eliminating any necessity for an impairment rating to the left upper extremity.

Claimant was also examined by Dr. Ernest Schlachter at the request of claimant's attorney. Dr. Schlachter, a general practitioner, examined claimant on October 17, 1991, and July 23, 1992. His examinations indicated claimant exhibited full-range motion in the shoulders with diffused tenderness, inconstant mild crepitus, pain in the rotator cuff, and tenderness in the medial epicondyle of both elbows, right greater than left. He diagnosed

overuse syndrome of both upper extremities and right shoulder girdle, tendinitis of both wrists and the right shoulder and bilateral epicondylitis. He assessed claimant a twenty percent (20%) functional impairment to the right upper extremity which converts to a twelve percent (12%) whole body impairment. He further assessed a ten percent (10%) functional impairment to the left upper extremity which converts to a six percent (6%) whole body impairment and a five percent (5%) functional impairment to the body as a whole due to her right shoulder which, all combined, equates to a nineteen percent (19%) whole body impairment on a functional basis. He permanently restricted claimant from repetitive pushing, pulling, twisting or grasping with either hand or arm, no lifting over fifteen (15) pounds with either hand or arm, to avoid cold environments and vibratory tools, and no work above the horizontal with the right arm.

Claimant was returned to work with the respondent earning \$10.41 per hour with occasional overtime which exceeded the \$8.42 an hour wage being earned at the time of the original injury.

K.S.A. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 44-508(g) defines burden of proof as follows:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 1992 Supp. 44-510(e)(a) states in part:

"Functional impairment means the extent, expressed as a percentage of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

Dr. Melhorn, the treating physician, assessed claimant at a nine and three-fourths percent (9.75%) functional impairment to the right upper extremity as a result of the claimant's problem. Dr. Melhorn felt the claimant could not justify any impairment to her shoulder or to her left upper extremity from his multiple examinations. Dr. George Lucas also examined claimant and found support for a ten percent (10%) functional impairment to the right upper extremity with no impairment to the left upper extremity or the shoulder. Both Dr. Melhorn and Dr. Lucas found claimant's shoulder examinations to be normal.

Only Dr. Schlachter, a general practitioner, found any evidence to support an impairment to claimant's shoulders or to the claimant's left upper extremity. It is the claimant's burden of proof in these matters to prove by a preponderance of the credible evidence her position is more probably true than not true.

The Appeals Board finds the medical testimonies of Dr. Lucas and Dr. Melhorn to be more credible and to have greater weight in this matter than that of Dr. Schlachter. As

such, the Appeals Board adopts the ten percent (10%) functional impairment to the right upper extremity assessed by Dr. Lucas and awards the same to claimant.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated February 24, 1994, is affirmed and an award of compensation is entered in favor the claimant, Vivian R. Fry, and against the respondent, Cessna Aircraft Co., and its insurance carrier, Pacific Employers Insurance Co., and the Kansas Workers Compensation Fund, for a ten percent (10%) permanent partial impairment to the right upper extremity.

Claimant is entitled to 52.57 weeks temporary total disability at the rate of \$224.54 per week or \$11,804.06 followed by 15.74 weeks permanent partial disability at the rate of \$224.54 per week totalling \$3,534.26 for a total award of \$15,338.32, all of which is due and payable minus any amounts already paid.

Claimant is awarded unauthorized medical up to the statutory limit of \$350.00 upon presentation of an itemized statement.

Medical expenses incurred by claimant as a result of her accidental injury are awarded to be paid by the respondent and the Kansas Workers Compensation Fund.

Fees and expenses necessary to defray the expenses of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and the Kansas Workers Compensation Fund per the stipulation of the parties to be paid as follows:

Barber & Associates	
Transcript of Regular Hearing	Unknown
Deposition of Ernest R. Schlachter, M.D.	\$189.20
Deposition of Vivian R. Fry	\$330.00
Don K. Smith & Associates	
Deposition of J. Mark Melhorn, M.D.	\$379.50
Deposition Services	
Deposition of George L. Lucas, M.D.	\$178.60

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

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